UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,944	03/26/2004	Edward D. Glas	MS307029.01 / MSFTP637US	9894

			EXAMINER
27195	7590	11/04/2005	HUYNH, PHUONG

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ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/810,944	GLAS ET AL.
	Examiner	**Art Unit**	
	Phuong Huynh	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 October 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-21</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-21</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>26 March 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form

the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by

Chen et al. (US Patent No. 5,812,780).

Regarding claim 1, Chen et al. discloses a system that test loads a server [Figs 3A and

3B] comprising:

a dynamic load adjustor [simulated client 40] component that dynamically adjusts user

characteristics, for distribution thereof as a percentage of total requests sent to a server

being load tested (col. 8, lines 51-67; and col. 9, lines 1-14).

Regarding claim 2, Chen et al. discloses a profile characteristic data store [common

client profile38 in col. 8, lines 51-65; and/or simulation file 84 in Fig. 7; col. 10, lines 66-

67 and col. 11, lines 1-11; also see abstract, lines 25-27] that supplies the dynamic load

adjustor component with weighting for a characteristic defined in a user profile.

Regarding claim 3, Chen et al. discloses the dynamic load adjustor component further comprises a weighting designator that randomly assigns to users characteristics based on weightings defined in the user profile (see abstract, lines 20-27).

Regarding claim 4, Chen et al. discloses the characteristic is at least one of: network connections, browser types, and load patterns (see col. 11, lines 42-46; and col. 14, lines 56-65).

Regarding claim 5, Chen et al. discloses the characteristic is statistically determined based on web log records [log file 108 in Fig. 7] (also see abstract, lines 20-27). Regarding claim 6, Chen et al. discloses the characteristic is predetermined in a single user profile (see col. 3, lines 60-63; and col. 4, lines 1-9 and lines 21-31).

Regarding claim 7, Chen et al. discloses a load coordinator component that adjusts an intensity of a load test based on a current distribution of users entering and leaving the server relative to a desired test load (see col. 14, lines 50-56).

Regarding claim 8, Chen et al. discloses artificial intelligence component [API]. Regarding claim 9, Chen et al. discloses closed loop control to enable a continual and sustained rate of requests to the server (see col. 12, lines 56-67; and col. 13, lines 1-21).

Regarding claims 16-20, the method is met by the operation of the system of Chen et al.

Claims 10-15, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by

Malmskog et al. (US Patent No. 6,721,686).

Regarding claim 10, Malmskog et al. discloses a system that stress a server,

comprising:

an execution engine [testing tool application 22] that generates a scenario that loads the

server via a plurality of users, the plurality of users is dynamically adjusted based on

predetermined weightings of a user profile having weighted characteristics therein,

wherein the scenario distributes user characteristics as a percentage of total requests

(see col. 6, lines 12-48, and 58-67 ; and col. 7, lines 7-16; also see Figures 5-7).

Regarding claim 11, Malmskog et al. discloses the scenario comprises at least of a test

mix and a load profile (see col. 6, lines 61-67).

Regarding claim 12, Malmskog et al. discloses a control input that adjusts rate of

requests loaded onto the server [operating system 24 along with K-Queue and filter]

(see col. 4, lines 31-47, and col. 3, lines 37-43).

Regarding claim 13, Malmskog et al. discloses a queuing mechanism [K-Queue] that

retrieves and sorts requests to be sent to the server (see col. 3, lines 7-43).

Regarding claim 14, Malmskog et al. discloses a scheduler [traffic shaper 24b and delay

parameter 44] that determines number of requests to be generated for an upcoming

period (see col. 5, lines 31-39).

Regarding claim 15, Malmskog et al. discloses the requests are sorted according to

time function for execution [TCP/IP routines] (see Figure 5).

Regarding claim 21, Malmskog et al. discloses the system for test loading a server

comprising:

means for dynamically adjusting user characteristics while loading the server [network
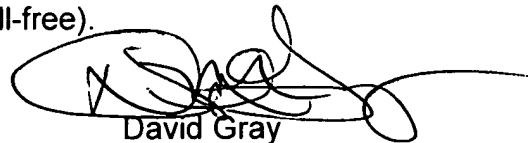
device 20] (see col. 2, lines 55-65); and

means for distributing the user characteristics as a percentage of total requests sent to

the server [scenario configuration interface] (see Figure 7).

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Phuong Huynh whose telephone number is 571-272-

2718. The examiner can normally be reached on M-F: 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David Gray can be reached on 571-272-2219. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

David Gray
Primary Examiner